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FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 20 2012

OFFICE OF
MANAGING DIRECTOR

S. Tanna
Path Enterprises, Inc.
Post Office Box 976
South Orange, NJ 07079

Re: Waiver Request (Late Payment Penalty; 47
U.S.C. § 159(c)(1), 31 U.S.C. § 3717, 47 C.F.R. §
1.1166)

Licensee/Applicant: Path Enterprises, Inc.

Station: N/A

Fees: Fiscal Year (FY) 2010 and 2011 Regulatory
Fees Late Penalty Fees

Date Request Filed: Mar. 19, 2012

Date Regulatory Fees Paid: Mar. 19, 2012

Date Late Penalty Fees Paid: Mar. 19, 2012

FY 2012 Regulatory Fee: Unpaid

Fee Control No.: RROG-11-00014242

Dear Mr. Tanna:

This responds to Licensee's *Request*¹ for waiver and refund of the statutory penalty, interest and penalty charges, and collection charges (*penalties*) that accrued because Licensee did not pay its Fiscal Year (FY) 2010 and 2011 regulatory fees. For the reasons stated herein, we must deny the *Request*. For the reasons stated herein, we must deny the *Request*.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,² and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."³ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁴

¹ Email from S. Tanna (stanna@pathenterprisesince.com), to ARINQUIRIES, (ARINQUIRES@fcc.gov) (Mar. 19, 2012)(*Request*).

² 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

³ 47 U.S.C. § 159(c)(1); 47 C.F.R. § 1.1164.

⁴ 47 C.F.R. § 1.1164

For FY 2010, the deadline for paying regulatory fees was August 31, 2010,⁵ and for FY 2011, the deadline for paying regulatory fees was September 16, 2011⁶ and for FY 2012, the deadline for paying regulatory fees was Sept. 13, 2012⁷. Licensee's FY 2010 and 2011 payments were not received and credited until March 19, 2012, thus Licensee failed to meet its obligations. In addition, Licensee failed to meet its obligations by failing to make any payments on the FY 2012 regulatory fees. Licensee's assertions that "[it] had no clear indication or instructions that [it would] not ... receive[] any billing notifications and [it] did not [know] the web address and the date to go on the FCC site"⁸ are not legal grounds or clear mitigating circumstances to waive collection of the penalty. The Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."⁹ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

On May 14, 2009, the Commission proposed to mandate electronic filing of regulatory fee information through the agency's Fee Filer system.¹⁰ The Commission explained that, "[c]onsistent with [its] proposal to require mandatory use of Fee Filer ... pre-bill information would be loaded into Fee Filer for viewing, but would not be mailed directly to the licensee via surface mail."¹¹ On July 31, 2009, the Commission released its order adopting these proposals.¹² In that order, the Commission advised regulatees that "because all pre-bills will be loaded into Fee Filer, once Fee Filer becomes operational, this will be the signal by which licensees can view their pre-bill information online."¹³ The Commission issued a public notice informing regulatees that use of Fee Filer was mandatory in FY 2009 and that "regulatory fee bills will no longer be mailed to the regulatee, but can be viewed by logging on the Fee Filer."¹⁴ On September 2, 2009, the Commission released a third public notice reiterating that **"HARDCOPY BILLS WILL NO LONGER BE MAILED BY THE FCC."**¹⁵

Similarly, the Commission's final order on the FY 2010 regulatory fees reaffirmed that regulatees should "check[] the Commission's website periodically beginning in July" in order to "ascertain the fee due date, and receive instructions on how to access Fee Filer, view their bill,

⁵ See FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time, *Public Notice*, DA 10-1451 (Aug. 9, 2010).

⁶ See FY 2011 Regulatory Fees Due No Later Than September 14, 2011, Eastern Time, *Public Notice*, DA 11-1420 (Aug. 17, 2011); FY 2011 Regulatory Fee Deadline Is Extended To 11:59 PM ET, September 16, 2011, *Public Notice*, DA 11-1559 (Sep. 15, 2011).

⁷ See FY 2012 Regulatory Fees due No Later Than September 13, 2012, *Public Notice*, DA 12-1295 (Aug. 13, 2012).

⁸ *Request*.

⁹ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972 ¶ 16 (2009).

¹¹ *Id.* at 5973 ¶ 20.

¹² Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Report and Order*, 24 FCC Rcd 10301, 10307-09 ¶¶ 18-27 (2009) (*FY 2009 Regulatory Fees NPRM*).

¹³ *Id.* at 10309 ¶ 26.

¹⁴ *Fee Filer Mandatory for FY 2009 Regulatory Fees*, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009).

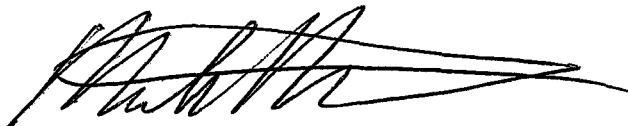
¹⁵ Payment Methods and Procedures for Fiscal Year 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 11513, 11514 (2009) (emphasis in original).

and make a fee payment.”¹⁶ This notification was part of the Commission’s increased effort to notify licensees that hardcopy bills will no longer be mailed.¹⁷

Every licensee is obliged to make the fee payment by the deadline. Although the Commission has waived late fees on a showing of good cause, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on the amount of time after the deadline within which the regulatee satisfies its payment obligations; indeed, the penalty for late payment applies even to situations where the deadline is missed by a short period of time.¹⁸ The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful, and if it is to be waived, it is “only in the most extraordinary circumstances,”¹⁹ which Licensee did not establish. Thus, we must deny the *Request*.

Our records show that Licensee has not paid its FY 2012 regulatory fee, thus Licensee is delinquent. The \$258.75 regulatory fees and accrued charges²⁰ must be received, together with a Form 159 (copy enclosed), within 30 days of the date of this letter. Moreover, as noted above, because Licensee is delinquent in paying the fee, until the full amount due is paid, we are required to withhold action on any application filed or pending by Licensee.²¹ If full payment of that amount is not received by that date, additional interest, penalties, and charges required by 31 U.S.C. § 3717(e) will continue to accrue from the date of this letter. Furthermore, under the law,²² the Commission will initiate collection proceedings against Licensee. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

Enclosure

¹⁶ Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291 ¶ 37 (2010).

¹⁷ See Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3918, 3923 ¶ 12 (2010).

¹⁸ See *XO Communications, LLC* (OMD, Nov. 10, 2010).

¹⁹ *McLeodUSA Telecommunications Services, Inc.*, *Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

²⁰ See Bill number R12P809730.

²¹ 47 C.F.R. § 1.1910.

²² See 47 C.F.R. § 1.1901, *et seq.*

Stephen French

From: S. Tanna [stanna@pathenterprisesinc.com]
Sent: Monday, March 19, 2012 6:37 PM
To: ARINQUIRIES
Subject: Dispute R11P809730 and 10RE008927

Dear Sir

We are disputing portion of the bill indicated in the subject line. We are disputing as applicable charges that are for the Penalty Interest and Admin fees. We have just paid the two bill numbers indicated in the subject line in its entirety. .

We are disputing charges that are for the Penalty Interest and Admin fees. The amounts are \$118.06 and \$80.00 for year 2011 and 2010 respectively. We had no clear indication or instructions that we were not going to receive any billing notifications and we did not even no the web address and the date to go on to the FCC site for this. It would be grossly unfair to penalize someone when proper notification of the outstanding bill has not been provided, even though we have been in business for few years now. We were informed for the first time this week of this charges.

We have paid them in its entirety in good faith and are expecting a refund for the amounts of \$118.06 and \$80.00 totaling to \$198.06

Thx

**Mr. S. Tanna
Path Enterprises**

3/20/2012